IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.141 OF 2004

Tukaram Ganpati Valiv .... Petitioner
Vs.
Smt. Sunita Vijay Valiv .... Respondent

Sarvasri P.S. Dani with N.D. Hombalkar
for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 24, 2004

P.C:

Heard the learned Advocate for the petitioner. The petitioner challenges the order dated 30-7-2004 passed by the lower Appellate Court setting aside the order of the trial Court rejecting the plaint. The plaint was rejected in exercise of the power under Order 7 Rule 11(d) of the Code of Civil Procedure. The learned Advocate for the petitioner, placing reliance in the Full Bench decision of the Allahabad High Court in the matter of **Chunnilal v. Narsingh Das,** reported in 1917 Vol.40 I.L.R. (Allahabad Series) Page 341, submitted that even though there are no statutory provisions barring the suit for damages in relation to the alleged defamatory statement made in the pleadings in the Court, considering the decision of the Full Bench of the Allahabad High Court (supra), no fault can be

found with the order passed by the trial Court.

The provision of law contained in Order 7, Rule 11(d) of the C.P.C. are very clear to the effect that the bar to the suit spoken of is in relation to the statutory provision. Merely because the cause of action for the damages is stated to be the alleged defamatory statement in the pleadings in any Court proceedings, it would not empower the Court to exercise powers under Order 7, Rule 11(d) of the C.P.C. Bearing this in mind, the aforesaid decision of the Allahabad High Court could not be a justification for exercise of power under Order 7 Rule 11(d) of the C.P.C. and therefore no fault can be found with the impugned order setting aside the order of the trial Court rejecting the plaint.

The learned Advocate for the petitioner submitted that by the impugned order the petitioner has also been forbidden from raising preliminary issue in relation to non-maintainability of the suit on the basis of the allegation in the plaint. The submission of the learned Advocate for the petitioner in that regard is devoid of substance as the lower Appellate Court while remanding the suit has categorically stated that the suit has been remanded to the trial Court for hearing further "from the stage at which that was disposed of on 17-1-2001.". In other words, the suit has been remanded

to be heard from the stage from which it was disposed of i.e. the disposal was in exercise of the power under Order 7 Rule 11 of the C.P.C. and therefore nothing prevents the petitioner from rasing preliminary issue if the petitioner so desires. With these observations and since there is neither any illegality committed by the Court below nor there is any improper exercise of jurisdiction, there is no case for interference in the impugned order in revisional jurisdiction. Hence, the revision application is rejected.